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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,387	01/05/2006	David Peter Shaw	PL10-002	3069
21567 7590 04/22/2008 WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201				
EXAMINER				
SCHILLINGER, ANN M				
ART UNIT		PAPER NUMBER		
3774				
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04/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/563,387

Applicant(s)

SHAW, DAVID PETER

Examiner

ANN SCHILLINGER

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-12, and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9-11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silvestrini (EP 0 331 345 A2) in view of Gabbay (US Pat. No. 6,869,444). Silvestrini discloses the following of the claimed invention: a prosthetic valve in the form of a flap valve which includes at least one flap (12) arranged to allow movement of liquid through the valve only in one direction, the or each flap being made of a flexible openwork structure of a medically acceptable metal (col. 3, lines 2-23). A single flap (12) arranged to close against a supporting wall (16) mounted upon a peripheral stent (14). Silvestrini discloses the limitations of claims 3 and 5 as shown in Figure 1. Silvestrini discloses the peripheral rib of claim 6 in col. 2, lines 23-26. Silvestrini discloses the peripheral stent of claim 7 in element 14. Silvestrini discloses the following of claims 10 and 11: a method of promoting tissue growth and endothelialisation, minimizing the risk of foreign body infection following the fitting of a prosthetic valve in a living subject (col. 1, line 4-6), said method including the provision of a prosthetic valve in which the or each flap (12) is made of a flexible open work structure of a medically acceptable metal (col. 3, lines 2-23), wherein the flexible openwork structure is selected from the group consisting of: knitted wire and chainmail (col. 2, lines 27-38, and col. 3, lines 19-31).

However, Silvestrini does not disclose the prosthetic's flexible openwork structure being made from knitted wire. Gabbay teaches a cardiac prosthesis constructed from a titanium alloy knitted wire in col. 10, line 63 through col. 11, line 10 and col. 11, line 57 through col. 12, line 5 for the purpose of providing the prosthesis with the desired resiliency. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use knitted wires to construct the prosthesis in order to provide the prosthesis with the desired resiliency.

Please note that the examiner is interpreting the term "knit" according to its dictionary definition: "to form a fabric by interlacing yarn or thread; to weave by making knots or loops" (knit. Dictionary.com. Webster's Revised Unabridged Dictionary. MICRA, Inc. <http://dictionary.reference.com/browse/knit> (accessed: April 17, 2008)).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silvestrini in view of Gabbay, further in view of Yang (US Pub. No. 2002/0138138). Silvestrini, as modified by Gabbay, discloses the invention substantially as claimed, however, they do not disclose placing an inert degradable coat over the valve. Yang teaches this coating in paragraph 0059 for the purpose of reducing the wear of the prosthetic parts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use this coating in order to reduce the wear of the prosthetic parts.

Response to Arguments

In view of the amendments made to claims 2-7 and 9, the objections to these claims are withdrawn.

Regarding the Silvestrini reference, the Applicant contends that the reference provides no motivation for using an alternate material to construct its flap. However, the Silvestrini reference in columns 1-3 states that a variety of materials may be used when constructing the prosthesis. The specific motivation to use the knitted wire is described above.

Regarding claim 12, it is known in the art that PTFE is an inert material and may be formulated to be degradable.

Applicant's remaining arguments with respect to claims 1-7, 9-12, and 14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANN SCHILLINGER whose telephone number is (571)272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ann Schillinger/
Examiner, Art Unit 3774

/Corrine M McDermott/
Supervisory Patent Examiner, Art Unit 3738